



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

900 North Skyline, Suite B • Idaho Falls, ID 83402 • (208) 528-2650

Brad Little, Governor  
John H. Tippetts, Director

April 15, 2020

Mr. Charles Gaudet  
PO Box 788  
Victor, Idaho 83455

**RE: Idaho §401 Water Quality Certification for NWW-2019-00568-I02 Home and Pond Expansion**

Dear Mr. Gaudet:

On March 11, 2020, the Idaho Department of Environmental Quality (DEQ) received a request for a §401 Water Quality Certification (WQC) from the Army Corps of Engineers concerning your proposed project constructing a house, garage, shop and associated improvements on your property near the Teton River.

DEQ drafted a WQC and began a public comment period on March 23, 2020 through April 14, 2020. DEQ received no comments and finalized the WQC. Enclosed, please find DEQ's final WQC.

Please do not hesitate to contact me at 208.528.2650 or [troy.saffle@deq.idaho.gov](mailto:troy.saffle@deq.idaho.gov) with questions or concerns about the WQC process and final permit.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy Saffle", followed by the initials "SG TS".

Troy Saffle  
Regional WQ Manager  
Idaho Falls Regional Office

enclosure

c: Katie Salsbury, Intermountain Aquatics  
James Joyner, ACOE  
Loren Moore, DEQ (w/o enclosure)



## Idaho Department of Environmental Quality Final §401 Water Quality Certification

April 14, 2020

**404 Permit Application Number:** NWW-2019-565-I02, Gaudet Home and Pond Expansion

**Applicant/Authorized Agent:** Charles Gaudet/Intermountain Aquatics, Inc.

**Project Location:** Teton County / N 43.624051 Latitude, W -111.174047 Longitude

**Receiving Water Body:** Isolated pond and wetland

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Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon its review of the joint application for permit, received on March 10, 2020, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

### Project Description

The project proposes to discharge rock and fill dirt in 0.24 acres of wetlands adjacent to the Teton River to facilitate the construction of a house, garage, and shop, and to widen a driveway. The driveway would be constructed to meet Teton County road standards. An existing pond on the property would be deepened and expanded converting 0.12 acres of wetlands to open water. Some previously permitted site/residential development has occurred on the property for partial building pads and initial access. Existing wetlands on the property will be enhanced to mitigate for the pond expansion and site development impacts.

### Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier I Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier II Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier III Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier I protection for that use, unless specific circumstances warranting Tier II protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

### ***Pollutants of Concern***

The primary pollutant of concern for this project is sediment. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment.

### ***Receiving Water Body Level of Protection***

This project is located on an isolated pond and adjoining wetland within the Teton Subbasin adjacent to assessment unit (AU) ID17040204SK028\_03 (Teton River ). The impacted waterbody and wetland are not designated in Idaho's WQS. The segment of the Teton River adjacent to the impacted water body is designated for cold water aquatic life, salmonid spawning, primary contact recreation and domestic water supply. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

According to DEQ's 2016 Integrated Report, the Teton River is not fully supporting one or more of its assessed uses. The aquatic life use is not fully supported. Causes of impairment include physical substrate habitat alterations, sedimentation/siltation, and temperature. The contact recreation beneficial use is fully supported. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life use and Tier II protection (IDAPA 58.01.02.051.02) in addition to Tier I for the contact recreation use. The only pollutant of concern associated with this project is sediment. However, sediment is not relevant to recreational uses since sediment will not degrade water quality necessary to support recreation uses, and it is therefore unnecessary for DEQ to conduct a Tier II analysis.

### ***Protection and Maintenance of Existing Uses (Tier I Protection)***

As noted above, a Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. Once a TMDL is developed, discharges of causative pollutants shall be consistent with the allocations in the TMDL (IDAPA 58.01.02.055.05). Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area. As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria. These criteria are set at levels that protect and maintain existing and designated beneficial uses. In addition, the project will be consistent with the Teton River Subbasin 2016 Total Maximum Daily Loads and Five-Year Review requirements for reducing sediment and temperature impacts to the watershed.

The project area is adjacent to an assessment unit (ID17040204SK028\_03 Teton River) that is included in Category 4a of the 2016 Integrated Report with approved TMDLs for sedimentation and water temperature. The pond that will be expanded as part of the project is isolated from the Teton River through a water control feature that according to project plans will not be disturbed during construction. Project BMPs should be put in place that do not allow any run-off from disturbed areas resulting from construction activities to directly enter the Teton River, and that will not allow the discharge of ponded water during the pond expansion phase of the project. By maintaining project BMPs, it is unlikely any sediment will enter the Teton River thereby ensuring compliance with the Teton River Subbasin TMDL.

There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated and discussed above; therefore, the permit ensures that the level of water quality necessary to protect both existing and designated uses is maintained and protected in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).



## Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

### ***General Conditions***

1. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.
3. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.
4. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project and any federal, state, or local government personnel.
5. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts to waters of the state beyond project footprints.
6. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
7. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the Section 404 permit.
8. If this project disturbs more than 1 acre and there is potential for discharge of stormwater to waters of the state, coverage under the EPA Stormwater Construction General Permit *must* be obtained. More information can be found at <https://www.epa.gov/npdes-permits/stormwater-discharges-construction-activities-region-10>  
<http://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/Region+10+CGP+resources>.

### ***Fill Material***

9. Fill material subject to suspension shall be free of easily suspended fine material. The fill material to be placed shall be clean material only.
10. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow into or out of any wetland area.
11. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.

12. All temporary fills shall be removed in their entirety on or before construction completion.
13. Excavated or staged fill material must be placed so it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled.

### ***Vegetation Protection and Restoration***

14. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
15. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
16. Fencing and other barriers should be used to mark the construction areas.
17. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
18. If authorized work results in unavoidable vegetative disturbance, riparian and wetland vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work.

### ***Dredge Material Management***

19. Upland disposal of dredged material must be done in a manner that prevents the material from re-entering waters of the state.

### ***Management of Hazardous or Deleterious Materials***

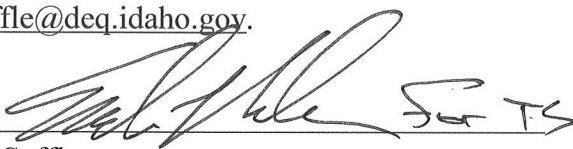
20. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
21. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
22. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use. A log book of these inspections shall be kept on site and provided to DEQ upon request.
23. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
24. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment prior to entering a water of the state. Any wastewater or wash water must not be allowed to enter a water of the state.
25. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
26. In accordance with IDAPA 58.01.02.850, in the event of an unauthorized release of hazardous material to state waters or to land such that there is a likelihood that it will enter state waters, the responsible persons in charge must
  - a. Make every reasonable effort to abate and stop a continuing spill.

- b. Make every reasonable effort to contain spilled material in such a manner that it will not reach surface or ground waters of the state.
- c. Call 911 if immediate assistance is required to control, contain, or clean up the spill. If no assistance is needed in cleaning up the spill, contact the appropriate DEQ regional office during normal working hours or Idaho State Communications Center after normal working hours (1-800-632-8000). If the spilled volume is above federal reportable quantities, contact the National Response Center (1-800-424-8802).  
Idaho Falls Regional Office: 208-528-2650 / 800-232-4635
- d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

## Right to Appeal Final Certification

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the “Rules of Administrative Procedure before the Board of Environmental Quality” (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Troy Saffle at 208.528.2650 or via email at [troy.saffle@deq.idaho.gov](mailto:troy.saffle@deq.idaho.gov).



Troy Saffle  
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Idaho Falls Regional Office